

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

DOCKET NOS. 89-6-E & 90-7-E - ORDER NO. 90-177

FEBRUARY 22, 1990

IN RE: Semi Annual Review of Base Rates for)	ORDER DENYING
Fuel Costs of South Carolina Electric)	MOTION TO COMPEL
& Gas Company.)	

On December 18, 1989, in Docket No. 89-6-E, the Consumer Advocate of South Carolina (the Consumer Advocate) filed with the Public Service Commission of South Carolina (the Commission) a Motion to Compel in the above-captioned matter. On December 27, 1989, in Docket No. 89-6-E, South Carolina Electric & Gas Company (SCE&G) filed a Return to that Motion. A new docket was instituted in January 1990, and on January 26, 1990, SCE&G filed a Motion for a Protective Order in the new docket, 90-7-E. On January 30, 1990, in Docket No. 90-7-E, the Consumer Advocate filed a Response to SCE&G's Motion for Protective Order.

The Consumer Advocate's Motion to Compel requested that the Commission order SCE&G to provide copies of SCE&G rail and coal contracts to the Consumer Advocate without requiring the Consumer Advocate and its consultant to sign a confidentiality agreement. SCE&G filed a Return and a Motion for Protective Order stating that the rail and coal contracts were confidential and that the


information must be protected from indiscriminate and uncontrolled disclosure and use by persons who might not be subject to the jurisdiction of this Commission under pertinent law. According to SCE&G, unauthorized disclosure of the identity of coal suppliers or the specific terms of coal supply contracts would place SCE&G at a distinct disadvantage in future negotiations for fuel supplies in the highly competitive market. SCE&G stated that the removal of protection for its negotiations would seriously impair the Company's ability to fulfill its responsibility to purchase fuel supplies reasonably and cost efficiently. According to SCE&G, the Company and its customers would thereby be exposed to the prospect of higher fuel costs without any genuine ability to prevent that result. SCE&G stated that it was not seeking to deny the Consumer Advocate access to the information, but SCE&G's interest lies in the protection of the information. Therefore, SCE&G offered to make the information available to the Consumer Advocate under an agreement which would provide for a degree of control of the persons to whom access is granted for limitation of disclosure or release, and for some enforceable remedy in the event that the information were disclosed in violation of an agreement. For example, if a prospective coal supplier had the knowledge of the information here sought to be protected, that supplier would be able to utilize that information to negotiate more favorable terms for it. A potential coal supplier with knowledge of the terms and

conditions of existing contracts will insist on at least as favorable terms and conditions for it. In effect, the terms and conditions in existing coal supply contracts would establish limits on SCE&G's ability to negotiate terms and conditions more favorable to it and its customers. SCE&G stated that the Company's transportation contracts exclusively provide that they will not be disclosed to third parties unless provided by law or regulation. Such unauthorized disclosure would constitute a breach of the agreements that would imperil the Company's ability to provide for delivery of the coal to its generating plants.

The Consumer Advocate's response stated that SCE&G's Motion is based on pure speculation that prices may increase due to disclosure of coal and transportation contracts. The Consumer Advocate's position is that if parties are precluded from evaluating the current market based upon the success or failure of other South Carolina utilities in obtaining better prices for coal, they cannot use the best source of prevailing market conditions to evaluate a utility's fuel procurement practices. In a situation where a utility company's management practices were evaluated in isolation because its coal contracts are confidential and thus cannot be compared to other utilities' contracts, the fuel procurement practices will be measured against that company's past behavior rather than that of similarly regulated industries.

The Commission finds that the Motion to Compel should be denied. The Commission rules, for the purposes of this case, based on the assertions of SCE&G, that the contracts are confidential and requires the Consumer Advocate and its consultants to sign a confidentiality agreement. The Commission, although not wishing to hinder the Consumer Advocate's discovery process, is concerned about the possibility of information being disclosed that could place SCE&G at a disadvantage in negotiations for fuel suppliers in a highly competitive market. Therefore, the Motion to Compel of the Consumer Advocate is denied.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Executive Director

(SEAL)